

March 27, 2009

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Mayor
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Re: SFC Yonkers Project - Why we propose use of a Full Tax Agreement and related Full Tax Agreement Bonds issued by YIDA ("FTA Bonds") versus Tax Increment Financing under GML Article 18-C ("TIF") with the Tax Increment Financing Bonds issued by the City of Yonkers ("TIF Bonds")

Mayor Amicone:

The redevelopment of downtown Yonkers has been the subject of Urban Renewal Plans dating back to the 1970's. As you are aware, the current project being undertaken by Struever Fidelco Cappelli LLC (the "SFC Project") involves changes to Yonkers downtown that necessitate addressing dated and worn out infrastructure. The planning for the SFC Project began in 2002 and envisioned infrastructure upgrades that would benefit the whole downtown area versus just the facilities being constructed by the SFC Project team. The infrastructure needs have since been estimated at \$212,000,000. From the beginning of this process, your working group concluded that such a massive undertaking is beyond the ability of any single project to fund, is beyond the ability of the City of Yonkers to fund, and is beyond what reasonably could be anticipated from State and federal grant programs. Therefore, the concept of increment financing has always been included as a critical part of the financing package for the SFC Project. Given the current economic climate, increment financing is more critical than ever for the future of the City of Yonkers. At your request, I am writing as transaction counsel for the City with respect to the SFC Project to outline the background and basis for the proposed increment structure. Also at your request, I have drafted this letter assuming that you will share the contents publically to allow all interested parties to understand the proposed structure.

TIF has been authorized in New York since 1984. However, the research of your working group (including the underwriters, input from Lamont Black and Keenan Rice and the attorneys representing the underwriters) shows that only two small TIF financings for the Town of Victor (approximately \$8 million) and the Town of Greenburgh (approximately \$1.2 million) have been completed to date. One of the main reasons for the infrequent use of TIFs is that the vast majority of municipalities within the State have separately assessing school districts which results in dividing the property tax receipts between the municipality and the local school district. As a result, the property taxes generated by the municipality are insufficient to leverage a viable bond financing. The exceptions to this general rule are the Big 5 cities in the State - New York, Buffalo, Rochester, Yonkers and Syracuse. The earliest research in this matter by our firm as transaction counsel for the SFC Project was in 2002 which concluded that TIF Bonds could be issued by the City of Yonkers for the SFC Project. However, with such an issue being the first ever of this size in New York state additional research was needed. In that the TIF Bonds would be issued by the City, in 2006 the City bond counsel was asked to research the issue and opine on concerns raised by the working group and otherwise. The City bond counsel confirmed that the City of Yonkers could issue TIF Bonds. However, when the working group did further research to determine how the increment would be created, a bigger concern surfaced. If TIF Bonds were

to be issued by the City of Yonkers, neither the increment nor the assessed value of the properties within the district could be assured and under certain scenarios, the increment and assessed values decline over time.

TIF Bonds in New York state call for a rigid statutory process to be followed. The payments that are used for debt service are true tax payments secured by tax liens. However, payments made under the Real Property Tax Law are a function of assessment, equalization rate and tax rate. After several public sessions discussing use of TIF Bonds, the working group brought together the assessor, the bankers and Keenan Rice (consultant with TIF experiences from other states) to outline the specifics of how the increment would be calculated and captured. That same year Yonkers had experienced a 20% change in its equalization rate from approximately 2.9% to 2.3%. A falling equalization rate means that City-wide market values are rising. This leads to the potential for commercial property owners to contest their assessed valuation. With an active grievance practice in Yonkers for commercial properties, a falling equalization rate is likely due to sales of residential properties. Given the limited circumstances when assessments can be grieved under New York law, those holding their property for long periods tend to have higher assessed valuations versus new owners. As these older residential properties are sold, the state formula picks up the spread between assessed value and sale price as one of the factors that impacts the equalization rate being calculated. If a commercial property has recently grieved its taxes and/or is otherwise properly assessed, a declining equalization rate will artificially inflate the estimated market value for the commercial property based on the assessed value and lead to further grievances. If the TIF Bonds were issued for improvements in a defined district, you can assume that these new improvements would be properly assessed when first established. If activity outside the increment area causes the equalization rate to decline, the tax formulas will imply a growing market value for the increment improvements. If this implied increase is beyond what the market price has grown to, the owners of the improvements in the increment district would grieve their taxes. Outside a written tax agreement, there is no way to prevent grievances by the owners in the increment district. As they grieve their taxes their assessment would be adjusted downward. In the extreme case, this practice could continue such that, if tax rates are otherwise stable, the aggregate tax load moves outside the increment district causing the actual amount paid by the owners in the increment district to decline. Under this scenario we cannot insure the TIF Bond holders of an increment or the tax jurisdictions of a base payment. This uncertainty was unacceptable to the working group bankers. During these discussions, Keenan Rice noted that the other states he works in have property tax agreements that eliminate these issues and bring certainty to the payment stream. As a practical matter, a property tax agreement for this type of project would need to involve the City of Yonkers Industrial Development Agency ("YIDA").

Across New York state, there are instances where the increment from a specific project is utilized for debt service with the consent of the tax jurisdictions through use of an IDA payment in lieu of tax agreement ("PILOT"). When bonds are issued by an IDA, and payments under the PILOT can be set up to have a base amount payable to the tax jurisdictions and an increment used for debt service, the structure is often referred to as "PILOT Increment Financing" or "PIF". This structure became very popular state-wide when the Empire Zone program added the refund for property taxes paid. Rather than negotiate a discounted payment under the PILOT and incur the debts directly, developers opted to pay the amount through the PILOT such that the amount was refunded and, effectively, the state program ended up paying the debt service on the borrowing. As transaction counsel for over 33 IDAs state-wide, we have worked on over a half dozen of these structures between 2002 and 2006 and brought to the working groups attention the

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\$300mm borrowing undertaken with this structure by City of Syracuse IDA for Destiny Mall.

To address local confusion over whether the term "PILOT" meant a discounted payment, versus the contractual document that could be written at full taxes, the working group proposed that YIDA enter into a Fixed/Full Tax Agreement ("FTA"). Through the FTA, the parties would have an increment district contractually identified by attaching an agreed schedule of properties to the FTA, would agree to specific amounts to be paid as the base amount to the tax jurisdictions such that the amount cannot decline, would agree to specific amounts for debt service such that these amounts cannot decline and would have the developer waive any grievance rights. Payments under the FTA would be secured by a mortgage lien on the SFC Project that is similar to a tax lien and the Company has agreed to cause to be purchased subordinate bonds to be issued by the Agency to cover any shortfalls in the capital required to fund the City approved public use improvements or shortfalls in debt service on FTA Bonds issued by the Agency. These subordinate bonds would be paid out of the increment when available with any credit risk falling on the Company. The FTA represents the culmination of years of research and negotiations in order to create an increment financing structure that can work in New York state. The basic structure used by the FTA has been successfully sold in the bond community, as evidenced by the Syracuse IDA project. As noted by Citibank when evaluating the SFC Project, "[i]n light of the recent events in the financial markets, the structuring of the bonds will be critical to the successful marketing of the debt." The FTA is the vehicle to make increment financing available to the SFC Project while meeting tax jurisdiction needs for known base revenue payments. The structure has the additional advantage of not being a City of Yonkers bond issue.

With the foregoing as background, I have enclosed a draft of the FTA for City Council consideration. Our firm is prepared to opine on this structure and the FTA Bonds to be issued.

Very truly yours,



Shawn M. Griffin